

NO. 47667-3-II

**COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

JEREMY OLSON & SANTANA TEMPLER,
APPELLANTS

Appeal from the Superior Court of Pierce County
The Honorable Garold Johnson

Nos. 14-1-03433-6 & 14-1-03434-4

BRIEF OF RESPONDENT

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2. Was there sufficient evidence to support the charge of burglary in the second degree against Defendant Templer, where, *inter alia*, she was seated in the car into which her codefendant was loading the stolen equipment, the equipment was identified as belonging to the school district and having been stored in room 12, and multiple motion detectors were activated inside the school to and from room 12? 1

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A. ISSUES PERTAINING TO APPELLANTS' ASSIGNMENTS OF ERROR.

1. Was there sufficient evidence to support the charge of burglary in the second degree against Defendant Olson, where, *inter alia*, he was seen loading stolen equipment into his vehicle, the equipment was identified as belonging to the school district and having been stored in room 12, and multiple motion detectors were activated inside the school to and from room 12?
2. Was there sufficient evidence to support the charge of burglary in the second degree against Defendant Templer, where, *inter alia*, she was seated in the car into which her codefendant was loading the stolen equipment, the equipment was identified as belonging to the school district and having been stored in room 12, and multiple motion detectors were activated inside the school to and from room 12?
3. Assuming, *arguendo*, either defendant's appeal is unsuccessful, should the Court impose appellate costs, where the defendant has failed to establish a manifest hardship as required by RCW 10.73.160?

B. STATEMENT OF THE CASE.

1. Procedure

On September 2, 2014, the defendants were charged each with one count of burglary in the second degree. CP 1-2; CP 75-76. Although separate informations were filed for each defendant, the defendants were charged as codefendants, with Defendant Olson's information listing only count I, CP 1-2, and Defendant Templer's information listing only count II, CP 75-76.

A consolidated trial commenced on March 2, 2015, before the Hon. Garold Johnson of the Pierce County Superior Court. I RP 3. After the conclusion of evidence, the court denied the state's request to instruct the jury regarding accomplice liability, finding insufficient facts for the jury to conclude that either defendant was only an accomplice to the burglary, rather than a principal. III RP 338. Closing arguments were delivered on March 5, 2015. III RP 343 *et seq.*

The jury returned their verdicts on March 6, 2015. IV RP 406-09. Defendant Olsen was found guilty as charged of burglary in the second degree. CP 35; IV RP 407. Defendant Templer was also found guilty as charged of burglary in the second degree. CP 108; IV RP 407.

2. Facts

On August 30, 2014, at approximately 5:30 p.m., an entry alarm was activated at the White River Alternative School in Buckley, Washington. III RP 286. White River school district employee David Bonn responded to the school and found the exterior door to room 12 open. III RP 287. He closed and locked the door, then did an area check. III RP 287. He did not see anyone in the area, nor any electronics equipment or other school property on the sidewalk outside room 12. III RP 289. Mr. Bonn reset the alarms and left. III RP 288.

At approximately 8:09 p.m., another alarm was activated when several motion sensors were activated inside the school in rooms 12 and

13. II RP 241, 267. At approximately 8:24 p.m., Pierce County Sheriff Deputy Eric Jank was dispatched to the school. II RP 140. When Deputy Jank arrived at the exterior door to room 12, he observed Defendant Olson loading a large audio speaker into his vehicle, a jeep. II RP 151-52. When Defendant Olson saw Deputy Jank, he jumped into his car and attempted to drive away. II RP 148. Deputy Jank stopped the vehicle and contacted the passengers. II RP 148. Defendant Olson was driving and Defendant Templer was in the front passenger seat. II RP 149-50, 219. In the back of the vehicle were two large audio speakers, two sound boards, a stage light, and a stage light stand. II RP 151, 246-48. On the driver's side floorboard were a chisel, a screwdriver, and a flashlight. II RP 152.

A metal plate was missing from the exterior door to room 12, exposing the door handle's locking mechanism and rendering the door openable with a screwdriver or similar tool. II RP 150-51. School district employee Martin Brewer arrived and identified the equipment in the defendants' vehicle as belonging to the school district and having been stored in room 12. II RP 173-74. Mr. Brewer testified that the school would not have put the equipment in the dumpster or out on the sidewalk because it still had value. II RP 246-48.

Defendants Olsen and Templer were separated and questioned separately. II RP 218-20. Defendant Olson said he had found the equipment on the sidewalk outside room 12. II RP 172. Defendant Templer said that Defendant Olson had removed the equipment from the

trash dumpster outside room 12. II RP 220. When Deputy Jank told Defendant Olson they were responding to an alarm in the school, Defendant Olson replied by asking whether they could “make a deal.” II RP 170.

It had been raining that day, II RP 152, and there was several inches of water in the bottom of the lid-less dumpster, II RP 154. However, the recovered equipment was all dry. II RP 152.

C. ARGUMENT.

1. THERE WAS SUFFICIENT EVIDENCE TO SUPPORT THE CHARGE OF BURGLARY IN THE SECOND DEGREE AGAINST DEFENDANT OLSON, BECAUSE *INTER ALIA*, HE WAS SEEN LOADING STOLEN EQUIPMENT INTO HIS VEHICLE, THE EQUIPMENT WAS IDENTIFIED AS BELONGING TO THE SCHOOL DISTRICT AND HAVING BEEN STORED IN ROOM 12, AND MULTIPLE MOTION DETECTORS WERE ACTIVATED INSIDE THE SCHOOL TO AND FROM ROOM 12.

There was sufficient evidence to support the charge of burglary in the second degree against Defendant Olson, because *inter alia*, he was seen loading stolen equipment into his vehicle, the equipment was identified as belonging to the school district and having been stored in room 12, and multiple motion detectors were activated inside the school to and from room 12.

“A sufficiency challenge admits the truth of the State's evidence and accepts the reasonable inferences to be made from it.” *State v. Federov*, 181 Wn. App. 187, 193-94, 324 P.3d 784 (2014) (quoting *State v. O'Neal*, 159 Wn.2d 500, 505, 150 P.3d 1121 (2007)). “The standard of review for a challenge to the sufficiency of the evidence” is whether, viewing the evidence “in a light most favorable to the State, ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *State v. Sweany*, 174 Wn.2d 909, 914, 281 P.3d 305 (2012) (quoting *State v. Randhawa*, 133 Wn.2d 67, 73, 941 P.2d 661 (1997) (citation omitted) (internal quotation marks omitted) (quoting *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980))); *see also, e.g., State v. Rich*, 184 Wn.2d 897, 903, 365 P.3d 746 (2016). Stated another way, a conviction will be reversed “only where no rational trier of fact could find that all elements of the crime were proved beyond a reasonable doubt.” *Federov*, 181 Wn. App. at 194 (quoting *State v. Smith*, 155 Wn.2d 496, 501, 120 P.3d 559 (2005)).

“A person is guilty of burglary in the second degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building other than a vehicle or a dwelling.” RCW 9A.52.030(1). “The unlawful entry element of burglary may be proved by circumstantial evidence, as may any other element.” *State v. J.P.*, 130 Wn. App. 887, 893, 125 P.3d 215 (2005) (citing *State v. McDaniels*, 39 Wn. App. 236, 240, 692 P.2d 894 (1984)).

Here, the evidence against Defendant Olson, when viewed in the light most favorable to the state, was sufficient to support his conviction for burglary in the second degree. Motion detectors confirmed entry into the building and he was caught loading the stolen equipment into his car.

More specifically, at approximately 5:30 p.m. that day, an entry alarm was activated for room 12 of the White River Alternative School in Buckley, Washington. III RP 286. A school district employee responded and found the exterior door to room 12 open. III RP 287. He closed and locked the door, then did an area check. III RP 287. He did not see anyone in the area, nor any electronics equipment or other school property on the sidewalk outside room 12. III RP 289.

At approximately 8:09 p.m., motion sensors were activated inside the school in rooms 12 and 13. II RP 241, 267. When Deputy Jank arrived at the exterior door to room 12, he observed Defendant Olson loading a large audio speaker into his vehicle. II RP 151-52. When Defendant Olson saw Deputy Jank, he jumped into his car and attempted to drive away. II RP 148. Deputy Jank stopped the vehicle and contacted the passengers. II RP 148. Defendant Olson was driving and Defendant Templer was in the front passenger seat. II RP 149-50, 219. In the back of the vehicle were two large audio speakers, two sound boards, a stage light, and a stage light stand. II RP 151, 246-48. On the driver's side floorboard were a chisel, a screwdriver, and a flashlight. II RP 152.

A metal plate was missing from the exterior door to room 12, exposing the door handle locking mechanism and rendering the door openable with a screwdriver or similar tool. II RP 150-51. Another school district employee arrived and identified the equipment as belonging to the school district and having been stored in room 12. II RP 173-74.

Defendants Olsen and Templer were separated and questioned separately. II RP 218-20. Defendant Olson claimed he had found the equipment on the sidewalk outside room 12. II RP 172. It had been raining that day. II RP 154. However, the recovered equipment was all dry. II RP 152.

When Deputy Jank told Defendant Olson they were responding to an alarm in the school, Defendant Olson replied by asking whether they could “make a deal.” II RP 170.

Viewing all of this evidence in the light most favorable to the state, there was sufficient evidence to support the jury’s verdict of guilty as to the crime of burglary in the second degree against Defendant Olson. Accordingly, Defendant Olson’s appeal should be denied.

2. THERE WAS SUFFICIENT EVIDENCE OF THE CHARGE OF BURGLARY IN THE SECOND DEGREE AGAINST DEFENDANT TEMPLER, BECAUSE *INTER ALIA*, SHE SEATED IN THE CAR INTO WHICH HER CODEFENDANT WAS LOADING THE STOLEN EQUIPMENT, THE EQUIPMENT WAS IDENTIFIED AS BELONGING TO THE SCHOOL DISTRICT AND HAVING BEEN STORED IN ROOM 12, AND MULTIPLE MOTION DETECTORS WERE ACTIVATED INSIDE THE SCHOOL TO AND FROM ROOM 12.

There was sufficient evidence to support the charge of burglary in the second degree against Defendant Olson, because *inter alia*, she was seated in the car into which her codefendant was loading the stolen equipment, the equipment was identified as belonging to the school district and having been stored in room 12, and multiple motion detectors were activated inside the school to and from room 12.

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(1997) (citation omitted) (internal quotation marks omitted) (quoting *State v. Green*, 94 Wn.2d 216, 221, 616 P.2d 628 (1980)); *see also, e.g., State v. Rich*, 184 Wn.2d 897, 903, 365 P.3d 746 (2016). Stated another way, a conviction will be reversed “only where no rational trier of fact could find that all elements of the crime were proved beyond a reasonable doubt.” *Federov*, 181 Wn. App. at 194 (quoting *State v. Smith*, 155 Wn.2d 496, 501, 120 P.3d 559 (2005)).

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Here, the evidence against Defendant Templer, when viewed in the light most favorable to the state, was sufficient to support her conviction for burglary in the second degree. Motion detectors confirmed entry into the building and she was caught in the vehicle into which the stolen equipment had been loaded.

More specifically, at approximately 5:30 p.m. that day, an entry alarm was activated for room 12 of the White River Alternative School in Buckley, Washington. III RP 286. A school district employee responded and found the exterior door to room 12 open. III RP 287. He closed and

locked the door, then did an area check. III RP 287. He did not see anyone in the area, nor any electronics equipment or other school property on the sidewalk outside room 12. III RP 289.

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inches of rainwater in the bottom of the lid-less dumpster, II RP 154.

However, the recovered equipment was all dry. II RP 152.

Finally, Defendant Templer also argues that, because she was seated in the vehicle when law enforcement arrived, there was insufficient evidence to conclude she ever entered the building. However, this argument ignores the jury's ability to consider and draw inferences from the circumstantial evidence in the case. As the trial judge put it when denying the state's request for a jury instruction on accomplice liability:

And as far as accomplice liability, I think that the jury could conclude that she's the one that went in the building as much as they can Mr. Oliver. They're both there. They're both present. But accomplice liability as opposed to direct liability is a different matter. And I do agree with [defense] counsel that that just isn't sufficient evidence to show that she was an accomplice; that she may have been a principal but not the accomplice in that sense of the word.

III RP 338-39. Although the state believes the trial court should have instructed the jury on accomplice ability, the state agrees with the trial court's assessment that "the jury could conclude that [Templer]'s the one that went in the building as much as they can Mr. Oliver." *Id.*

Therefore, viewing the evidence in the light most favorable to the state, there was sufficient evidence to support the jury's verdict of guilty as to the crime of burglary in the second degree against Defendant Templer. Accordingly, Defendant Templer's appeal should be denied.

3. ASSUMING, *ARGUENDO*, EITHER DEFENDANT’S APPEAL IS UNSUCCESSFUL, THE COURT SHOULD IMPOSE APPELLATE COSTS, BECAUSE THE DEFENDANT HAS FAILED TO ESTABLISH A MANIFEST HARDSHIP AS REQUIRED BY RCW 10.73.160.

Assuming, *arguendo*, either defendant’s appeal is unsuccessful, the Court should impose appellate costs, because the defendant has failed to establish a manifest hardship as required by RCW 10.73.160.

An appellate court may provide for the recoupment of appellate costs from a convicted defendant. RCW 10.73.160; *State v. Blank*, 131 Wn.2d 230, 234, 930 P.2d 1213 (1997); *State v. Mahone*, 98 Wn. App. 342, 989 P. 2d 583 (1999). The award of appellate costs to a prevailing party is within the discretion of the appellate court. *State v. Sinclair*, -Wn. App.-, *2-3, (2016)(2016 WL 393719); *see, also* RAP 14.2; *State v. Nolan*, 141 Wn.2d 620, 8 P.3d 300 (2000).

The Supreme Court has recently clarified that the imposition of legal financial obligations (LFOs) by a trial court requires “each judge to conduct a case-by-case analysis and arrive at an LFO order appropriate to the individual defendant's circumstances.” *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680 (2015). However, *Blazina* addressed the trial court LFO statute, RCW 10.01.160, not the appellate costs statute, RCW 10.73.160.

Under *Blazina*, trial courts should carefully consider a defendant's financial circumstances, as required by RCW 10.01.160(3), before imposing discretionary LFOs. But, as the Court in *Sinclair* points out at *5, the Legislature did not include such a provision in RCW 10.73.160. Instead, it provided that a defendant could petition for the remission of costs on the grounds of "manifest hardship." See RCW 10.73.160(4).

Here, each defendant has failed to establish any such "manifest hardship." Accordingly, this Court should impose appellate costs, assuming, *arguendo*, the defendant's appeal is unsuccessful.

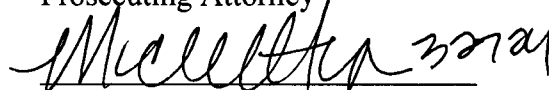
D. CONCLUSION.

The evidence, when viewed in the light favorable to the state, was sufficient to support the jury's verdicts of guilty as to both defendants for the crime of burglary in the second degree.

In addition, assuming, *arguendo*, either defendant's appeal is unsuccessful, the Court should impose appellate costs.

DATED: May 18, 2016.

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Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

5.19.16 Theresa Kal
Date Signature

PIERCE COUNTY PROSECUTOR

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